

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DASSAULT SYSTÈMES SOLIDWORKS
CORPORATION,

Plaintiff,

- v. -

EXCELL DESIGN & MANUFACTURING,
INC.,
MICHAEL WARNER
KEITH WARNER,
KURT WARNER,
and
KORY WARNER

Defendants.

Index No.:

COMPLAINT

Jury Trial Demanded

Plaintiff Dassault Systèmes SolidWorks Corporation (“DS SolidWorks”) by its undersigned counsel as and for its Complaint against Defendant Excell Design & Manufacturing, Inc. (“Excell”), Defendant Michael Warner, Defendant Keith Warner, Defendant Kurt Warner, and Defendant Kory Warner (collectively, “Defendants”) hereby alleges as follows:

NATURE OF THE ACTION

This is a copyright infringement, circumvention of technological measures, and Massachusetts Common Law breach of contract action arising out of Excell’s, Michael Warner’s, Keith Warner’s, Kurt Warner’s, and Kory Warner’s

unauthorized and willful use and copying of DS SolidWorks' SOLIDWORKS software package.

THE PARTIES

1. Plaintiff DS SolidWorks is a Delaware corporation, having a principal place of business at 175 Wyman Street, Waltham, MA 02451-1223.

2. On information and belief, Defendant Excell is a Wisconsin corporation having a principal place of business at S82W35319 Mailman Road, Eagle, WI 53119.

3. On information and belief, Defendant Michael Warner is an adult individual residing at S82W35319 Mailman Road, Eagle, WI 53119, who is the President of Excell.

4. On information and belief, Defendant Keith Warner is an adult individual residing at 319 Pleasant Street, Eagle, WI 53119, who is an employee of Excell.

5. On information and belief, Defendant Kurt Warner is an adult individual residing at 401 Meadow Lane, Eagle, WI 53119, who is an employee of Excell.

6. On information and belief, Defendant Kory Warner is an adult individual residing at 442 Bolson Drive, Oconomowoc, WI 53066, who is an employee of Excell.

JURISDICTION AND VENUE

7. This action arises under 17 U.S.C. § 101 et seq. for infringement of copyrights owned by DS SolidWorks.

8. This Court has subject matter jurisdiction over these copyright infringement and circumvention claims pursuant to 28 U.S.C. §§ 1331, 1332(a), and 1338(a). This Court has subject matter jurisdiction over the state law claim pursuant to 28 U.S.C. §1367(a).

9. This Court has personal jurisdiction over Excell because, among other things, Excell resides in and transacts business in Wisconsin and in this judicial district.

10. This Court has personal jurisdiction over Michael Warner because, upon information and belief, Michael Warner is President of Excell and a resident of Wisconsin, also residing within this judicial district.

11. This Court has personal jurisdiction over Keith Warner because, upon information and belief, Keith Warner is an employee of Excell and a resident of Wisconsin, also residing within this judicial district.

12. This Court has personal jurisdiction over Kurt Warner because, upon information and belief, Kurt Warner is an employee of Excell and a resident of Wisconsin, also residing within this judicial district.

13. This Court has personal jurisdiction over Kory Warner because, upon information and belief, Kory Warner is an employee of Excell and a resident of Wisconsin, also residing within this judicial district.

14. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(2), 1391(c)(2), 1391(d), and 1400(a).

BACKGROUND

DS SolidWorks and the Copyrighted Works

15. DS SolidWorks is the creator, author, and owner of the software code for the SOLIDWORKS software package, which is a computer-aided design (“CAD”) software package.

16. DS SolidWorks has created, authored, and is the owner of various “releases” of SOLIDWORKS, each building upon the prior release.

17. DS SolidWorks owns many copyright registrations for the SOLIDWORKS software package, including the registrations in Table 1 below, also attached as Exhibit 1, hereto.

Registration Number	Registration Name
TX 0005225647	SolidWorks 2000
TX 0005666476	SOLIDWORKS 2001 PLUS
TX 0005725523	SOLIDWORKS 2003
TX 0008443820	SOLIDWORKS 2017
TX 0008540002	SOLIDWORKS 2018
TX 0008895494	SOLIDWORKS 2019

Table 1

Detection of Infringement by Defendants

18. The SOLIDWORKS software incorporates detection and monitoring technology that detects and identifies use of unlicensed and unauthorized copies of the SOLIDWORKS software and transmits identifying data to DS SolidWorks over the internet when such unauthorized uses occur.

19. Through its monitoring technology, DS SolidWorks detected at least 765 uses of unlicensed and unauthorized copies of the SOLIDWORKS software on at least three different computers having Media Access Control (“MAC”) addresses as shown below in Table 2 (the “Computers”).

Computer	Mac Addresses
1	f4f26d060a13 e0469aa4ff4d
2	f4f26d063894 408d5c87bc41
3	509a4c31907c

Table 2

20. Through its monitoring technology, DS SolidWorks detected that 6 of the above-referenced 765 uses of the unlicensed and unauthorized copies of the SOLIDWORKS software occurred on Computer 1 while connected to the internet from an IP address of 184.100.5.166.

21. Through its monitoring technology, DS SolidWorks detected that 8 of the above-referenced 765 uses of the unlicensed and unauthorized copies of the

SOLIDWORKS software occurred on Computer 2 while connected to the internet from an IP address of 184.100.5.166.

22. On October 29, 2019, Excell activated a separate valid SolidWorks license on a computer with MAC address f4f26d060a13 and hostname “KEITH-PC” connected to the IP address 184.100.5.166.

23. Excell connects to the internet through IP Address 184.100.5.166.

24. Excell uses Computer 1, which has MAC Address f4f26d060a13.

25. The hostname on Computer 1 is “KEITH-PC.”

26. Through its monitoring technology, a portion of the username on Computer 1 detected during an unauthorized use was “Ke***.”

27. The username on Computer 1 is “Keith.”

28. Keith Warner is a user of Computer 1.

29. Through its monitoring technology, DS SolidWorks detected that 8 of the above-referenced 765 uses of the unlicensed and unauthorized copies of the SOLIDWORKS software occurred on Computer 1 while connected to the internet from an IP address of 184.97.192.88.

30. Through its monitoring technology, DS SolidWorks detected that 11 of the above-referenced 765 uses of the unlicensed and unauthorized copies of the SOLIDWORKS software occurred on Computer 2 while connected to the internet from an IP address of 184.97.192.88.

31. Through its monitoring technology, DS SolidWorks detected that 1 of the above-referenced 765 uses of the unlicensed and unauthorized copies of the SOLIDWORKS software occurred on Computer 3 while connected to the internet from an IP address of 184.97.192.88.

32. Through its monitoring technology, Dassault detected that all three Computers used the unlicensed and unauthorized copies of the SOLIDWORKS software while connected to IP address 184.97.192.88.

33. Excell connects to the internet with IP address 184.97.192.88.

34. Through its monitoring technology, a portion of the username on Computer 2 detected during an unauthorized use was “Ku**.”

35. The username on Computer 2 is “Kurt.”

36. Through its monitoring technology, a portion of the hostname on Computer 2 detected during an unauthorized use was “***T-PC.”

37. The hostname on Computer 2 is “KURT-PC.”

38. Kurt Warner is a user of Computer 2.

39. Through its monitoring technology, a portion of the username on Computer 3 detected during an unauthorized use was “Ko**.”

40. The username on Computer 3 is “Kory.”

41. Through its monitoring technology, a portion of the hostname on Computer 3 detected during an unauthorized use was “***Y-PC.”

42. The hostname on Computer 3 is “KORY-PC.”

43. Kory Warner is a user of Computer 3.

Infringement, Circumvention, and Breach by Excell, Michael Warner, Keith Warner, Kurt Warner, and Kory Warner

44. Upon information and belief, the Computers are owned by at least one of the Defendants.

45. Excell purports to be a full-service manufacturing company specializing in injection molds for investment foundries, prototype molds, prototype parts, and custom 3D engraving for motorcycles and automobiles. *See* www.excelldesignmfg.com.

46. DS SolidWorks’ SOLIDWORKS software packages are frequently used by full-service manufacturing companies for tasks such as prototyping molds and parts.

47. Upon information and belief, the Computers have been used by Keith Warner, Kurt Warner, Kory Warner, and/or employees of Excell or persons under the control of Excell.

48. Upon information and belief, Keith Warner, Kurt Warner, Kory Warner, and/or employees of Excell or persons under the control of Excell downloaded one or more copies of SOLIDWORKS from the internet.

49. Upon information and belief, Keith Warner, Kurt Warner, Kory Warner, and/or employees of Excell or persons under the control of Excell installed one or more copies of SOLIDWORKS on the Computers.

50. Upon information and belief, during the installation of SOLIDWORKS on the Computers, Keith Warner, Kurt Warner, Kory Warner, and/or by employees of Excell or persons under the control of Excell accepted DS SolidWorks' License Agreement. The License Agreement is attached as Exhibit 2, hereto.

51. The License Agreement states "You may not load or use [SOLIDWORKS] in any computer or copy it without a right to do so from [DS SolidWorks.]"

52. The License Agreement states "DS [SolidWorks] also reserves the right to use a hardware lock device, license administration software, and/or a license authorization key to control access to [SOLIDWORKS.] You may not take any steps to avoid or defeat the purpose of any such measures. Use of any Offering without any required lock device or authorization key provided by DS is prohibited."

53. Through its monitoring technology, DS SolidWorks detected the signature of the SolidSquad (SSQ) crack, a program used to defeat the purposes of DS SolidWorks' access control measures.

54. Upon information and belief, Keith Warner, Kurt Warner, Kory Warner, and/or employees of Excell or persons under the control of Excell ran the SolidSquad (SSQ) crack on the Computers following the installation of SOLIDWORKS.

55. Upon information and belief, Keith Warner, Kurt Warner, Kory Warner, and/or employees of Excell or persons under the control of Excell launched (executed) and/or used one or more unlicensed and unauthorized copies of SOLIDWORKS on the Computers.

56. Defendants did not have authorization from DS SolidWorks to launch (execute) and/or use SOLIDWORKS for the above referenced unlicensed and unauthorized uses.

57. Keith Warner, Kurt Warner, Kory Warner, and/or employees of Excell or persons under the control of Excell have been using DS SolidWorks's SOLIDWORKS software packages without authorization or permission from DS SolidWorks at least from June 13, 2017 to July 13, 2021.

58. Upon information and belief, Excell received a direct financial benefit from the use of SOLIDWORKS by Keith Warner, Kurt Warner, Kory Warner, and/or one or more of its employees or other persons under its control.

59. Upon information and belief, Michael Warner had reason to know about the use of SOLIDWORKS by Keith Warner, Kurt Warner, Kory Warner, and/or one or more of its employees or other persons under Excell's control.

Notice of Infringement To Defendants

60. On July 14, 2021, counsel for DS SolidWorks sent a first letter to Excell via email and First Class Mail to Michael Warner, offering to resolve Excell's unauthorized use of DS SolidWorks's SOLIDWORKS software packages on Computer 1. The July 14, 2021 letter is attached as Exhibit 3, hereto.

61. Between July 16, 2021 and July 21, 2021, Michael Warner and a compliance mediator from DS SolidWorks engaged in a series of communications regarding the possibility of resolving Excell's unauthorized use of DS SolidWorks's SOLIDWORKS software packages via a series of email messages and a phone call. No resolution was reached.

62. On July 26, 2021, counsel for DS SolidWorks sent a second letter to Excell via email and First Class Mail to Michael Warner, offering to resolve Excell's unauthorized use of DS SolidWorks's SOLIDWORKS software packages. The July 26, 2021 letter is attached as Exhibit 4, hereto.

63. On July 27, 2021, counsel for DS SolidWorks was informed via email that Excell retained the Law Offices of Steven C. Vondran ("Vondran") to represent it.

64. Between July 27, 2021, and August 8, 2021, counsel for DS SolidWorks and Vondran engaged in a series of communications regarding the possibility of resolving Excell's unauthorized use of DS SolidWorks's SOLIDWORKS software packages via a series of email messages.

65. Between July 29, 2021, and August 30, 2021, counsel for DS SolidWorks made repeated attempts to contact Vondran to resolve Excell's unauthorized use of DS SolidWorks's SOLIDWORKS software packages. Vondran did not respond to counsel for DS SolidWorks regarding Excell's unauthorized use of DS SolidWorks's SOLIDWORKS software packages between July 28, 2021, and December 17, 2021.

66. On August 30, 2021, counsel for DS SolidWorks advised Vondran that without a response, Excell's unauthorized use of DS SolidWorks's SOLIDWORKS software packages would be escalated for further legal action.

67. Vondran did not respond until December 17, 2021, after DS SolidWorks had approved the case of Excell's unauthorized use of DS SolidWorks's SOLIDWORKS software packages for further legal action. Emails from the communications between Vondran and counsel for DS SolidWorks from July 26, 2021, to December 17, 2021, are attached as Exhibit 5, hereto.

68. No settlement has been reached since Vondran's response on December 17, 2021.

COUNT I

FEDERAL COPYRIGHT INFRINGEMENT (17 U.S.C. § 501) **(against all Defendants)**

69. DS SolidWorks repeats and incorporates herein each of the preceding paragraphs.

70. SOLIDWORKS, including SOLIDWORKS 2017, SOLIDWORKS 2018, and SOLIDWORKS 2019, is an original work of DS SolidWorks and is protectable by the copyright laws of the United States.

71. DS SolidWorks owns all rights and title to the copyrights for SOLIDWORKS.

72. At least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell downloaded the SOLIDWORKS 2017, SOLIDWORKS 2018, and SOLIDWORKS 2019 releases of the SOLIDWORKS software to a computer storage unit, such as a hard disk drive, via the Internet, thereby creating a copy of the SOLIDWORKS software without authorization or permission from DS SolidWorks.

73. Subsequently to downloading a copy of SOLIDWORKS, at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell installed, executed, and used the SOLIDWORKS software on one or more computers without authorization or permission from DS SolidWorks.

74. Each time at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell executed SOLIDWORKS, at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell caused a computer to copy the SOLIDWORKS software code stored on the computer storage unit (e.g., hard disk drive) to the computer's volatile memory, e.g., random access memory (RAM) without authorization or permission from DS SolidWorks.

75. At least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell executed SOLIDWORKS at least on the Computers.

76. By making unauthorized copies of SOLIDWORKS as described above, at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell infringed and violated (directly or indirectly) DS SolidWorks's copyrights in SOLIDWORKS and the SOLIDWORKS Copyright Registrations, including at least DS SolidWorks's exclusive right under 17 U.S.C. § 106(1) "to reproduce the copyrighted work in copies."

77. Upon information and belief, Excell received a direct financial benefit from the above-described infringement of DS SolidWorks's copyrights.

78. Upon information and belief, Michael Warner had reason to know about the above-described infringement of DS SolidWorks's copyrights.

79. At least one of Excell's, Michael Warner's, Keith Warner's, Kurt Warner's, or Kory Warner's infringement and violation of DS SolidWorks's copyrights has been knowing and willful.

80. DS SolidWorks has been damaged by the aforementioned infringement.

COUNT II

CIRCUMVENTION OF TECHNOLOGICAL MEASURES

(17 U.S.C. § 1201)

(against all Defendants)

81. DS SolidWorks repeats and incorporates herein each of the preceding paragraphs.

82. SOLIDWORKS includes technological measures that effectively control access to the SOLIDWORKS software, including a requirement during installation to input an authorized License Key provided by DS SolidWorks to properly-licensed users of SOLIDWORKS to "unlock" SOLIDWORKS and thereby allow the installation, subsequent use of, and access to SOLIDWORKS.

83. Neither Excell, Keith Warner, Kurt Warner, nor Kory Warner received an authorized License Key from DS SolidWorks for the above referenced unlicensed and unauthorized uses.

84. Upon information and belief, at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell circumvented the technological measures incorporated in SOLIDWORKS to gain access to SOLIDWORKS by avoiding, bypassing, deactivating, or otherwise impairing such technological measures, including at least during the installation of SOLIDWORKS.

85. Upon information and belief, at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell used a Solidsquad (SSQ) crack signature to avoid, bypass, deactivate, or otherwise impair such technological measures.

86. By avoiding, bypassing, deactivating, or otherwise impairing the technological measures to control access to SOLIDWORKS, including by avoiding, bypassing, deactivating, or otherwise impairing the input of an authorized License Key, during the installation process, at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell have violated 17 U.S.C. § 1201.

87. Upon information and belief, Excell received a direct financial benefit from the above-described circumvention.

88. Upon information and belief, Michael Warner had reason to know about the above-described circumvention.

89. DS SolidWorks has been damaged by at least one of Excell's, Michael Warner's Keith Warner's, Kurt Warner's, or Kory Warner's above-described actions.

COUNT III

BREACH OF CONTRACT **(Massachusetts Common Law)** **(against Excell, Keith Warner, Kurt Warner, and Kory Warner)**

90. DS SolidWorks repeats and incorporates herein each of the preceding paragraphs.

91. The installation of SOLIDWORKS 2017, SOLIDWORKS 2018, and SOLIDWORKS 2019 requires the user to accept the terms of the SOLIDWORKS License Agreement. *See* Exhibit 2.

92. At least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell accepted the SOLIDWORKS License agreement when they installed SOLIDWORKS 2017, SOLIDWORKS 2018, and SOLIDWORKS 2019.

93. The License Agreement states “You may not load or use [SOLIDWORKS] in any computer or copy it without a right to do so from [DS SolidWorks.]”

94. Neither Excell, Keith Warner, Kurt Warner, nor Kory Warner received a right to load, use or copy SOLIDWORKS from DS SolidWorks for the above referenced unlicensed and unauthorized uses.

95. At least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell downloaded the SOLIDWORKS 2017, SOLIDWORKS 2018, and SOLIDWORKS 2019 releases of the SOLIDWORKS software to a computer storage unit, such as a hard disk drive, via the Internet, thereby creating a copy of the SOLIDWORKS software without a right to do so from DS SolidWorks.

96. Subsequent to downloading a copy of SOLIDWORKS, at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell installed, executed, and used the SOLIDWORKS software on one or more computers without a right to do so from DS SolidWorks.

97. Each time at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell executed SOLIDWORKS, at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell caused a computer to copy the SOLIDWORKS software code stored on the computer storage unit (e.g., hard disk drive) to the computer's volatile memory, e.g., random access memory (RAM) without a right to do so from DS SolidWorks.

98. At least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell executed SOLIDWORKS at least on the Computers.

99. By copying SOLIDWORKS as described above, at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell breached the License Agreement by copying SOLIDWORKS without the right to do so.

100. By loading SOLIDWORKS onto the Computers, at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell breached the License Agreement by loading SOLIDWORKS without the right to do so.

101. By using SOLIDWORKS on the Computers, at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell breached the License Agreement by using SOLIDWORKS without the right to do so.

102. The License Agreement states “DS [SolidWorks] also reserves the right to use a hardware lock device, license administration software, and/or a license authorization key to control access to [SOLIDWORKS.] You may not take any steps to avoid or defeat the purpose of any such measures. Use of any Offering

without any required lock device or authorization key provided by DS is prohibited.”

103. Upon information and belief, after installing SOLIDWORKS, at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell ran the SolidSquad (SSQ) crack program.

104. Running the SolidSquad (SSQ) crack program is a step to avoid or defeat the purpose of the license authorization key to control access to SOLIDWORKS.

105. By running the SolidSquad (SSQ) crack program, at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell breached the License Agreement.

106. DS SolidWorks did not provide Excell, Keith Warner, Kurt Warner, and/or Kory Warner a license authorization key for the copies of SOLIDWORKS used on the Computers by at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell for the above referenced unlicensed and unauthorized uses.

107. By using the SOLIDWORKS software without a license authorization key provided by DS SolidWorks, at least one of Keith Warner, Kurt Warner, Kory Warner, or employees of Excell or persons under the control of Excell breached the License Agreement.

108. The License Agreement states that it is to be governed by the law of the Commonwealth of Massachusetts.

109. DS SolidWorks has been damaged by the aforementioned breach.

PRAYER FOR RELIEF

WHEREFORE, DS SolidWorks prays for relief as follows:

A. For a judgment determining that Excell, Michael Warner, Keith Warner, Kurt Warner, and Kory Warner have infringed DS SolidWorks's copyrights in violation of 17 U.S.C. § 501;

B. For a judgment determining that Excell, Michael Warner, Keith Warner, Kurt Warner, and Kory Warner have circumvented a technological measure that controls access to the SOLIDWORKS software in violation of 17 U.S.C. § 1201;

C. For a finding that such infringement and/or circumvention was willful;

D. For a judgment determining that Excell, Keith Warner, Kurt Warner, and Kory Warner have breached the License Agreement under Massachusetts Common Law;

E. For a judgment preliminarily and permanently enjoining and restraining Excell, including its officers, directors, employees, agents, and servants, and all those in active concert of participation with any of them, Michael Warner,

Keith Warner, Kurt Warner, and Kory Warner from directly or indirectly infringing DS SolidWorks's copyrights;

F. For a judgment awarding DS SolidWorks (i) its actual damages in an amount to be determined in excess of \$75,000, (ii) any profits of Excell, (iii) statutory damages of \$150,000 per act of infringement, and (iv) costs of this action including attorneys' fees as permitted pursuant to 17 U.S.C. §§ 504 and 505;

G. For a judgment awarding DS SolidWorks any other damages to which it is entitled under statute or common law; and

H. For such other and further relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

DS SolidWorks hereby demands a trial by jury in this action.

Respectfully Submitted,

/Glenn E. Forbis/

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